

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



MICHAEL A. DELANEY  
DEPUTY ATTORNEY GENERAL

September 12, 2005

Section 5 Submission

Chief, Voting Section  
Civil Rights Division  
Room 7254 – NWB  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:38, a STATUTE related to verification of the checklists, most recently amended by Laws of 1994 Chapter 4 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:38, a STATUTE related to verification of the checklists, most recently amended by Laws of 1994 Chapter 4 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 4 (1994) amending RSA 654:38 is attached (Exhibit 654:38 A).
- b) The starting point for analysis, previously precleared, Chapter 436 (1979) recodifying RSA 69:26 as RSA 654:38 is attached (Exhibit 654:38 B).
- c) The changes made by amendments to RSA 654:38 are as follows:

1. Chapter 4 (1994) replaces the phrase “...*within 30 days*...” with the phrase “...*no later than the fifth Friday*...” in the introductory paragraph of this statute
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 4 (Exhibit 654:38 A). The bill was signed into law (by the Governor) on March 28, 1994, pursuant to New Hampshire Constitution Part Second, Article 44.

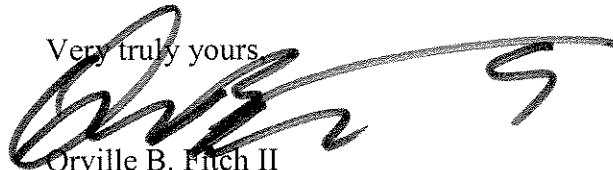
- i) Adoption dates:
  1. Chapter 4 (1994) adopted March 28, 1994
- j) Effective dates:
  1. Chapter 4 (1994) effective May 27, 1994
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
  1. The purpose of the Chapter 4 (1994) change is to amend the deadline for submitting a request to the Secretary of State seeking an order from the Ballot Law Commission for a

verification of the checklist. The verification of the checklist occurs by statute following every federal census, but may occur at other times when 50 voters or a majority of the Board of Supervisors of the Checklist petition the Ballot Law Commission under this statute. Verification is a process whereby persons who have not voted in the prior two cycles are sent notices that their names will be removed from the checklist unless they notify the Supervisors of the Checklist that they are still domiciled in the town or ward.

- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) RSA 654:38 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:38 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:38 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

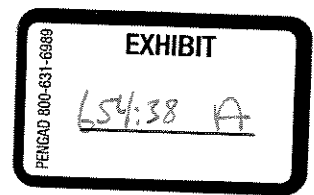
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II  
Senior Assistant Attorney General  
Civil Bureau  
(603) 271-1238  
[bud.fitch@doj.nh.gov](mailto:bud.fitch@doj.nh.gov)

92670.doc



18feb93.....1374h

2/3/94....3845s

3/17/94.....5659B-EBA

HOUSE BILL - FINAL VERSION

**1994 SESSION** 0835B

93-0492

10

HOUSE BILL NO. 514

INTRODUCED BY: Rep. Gilmore of Straff 11; Rep. Flanagan of Rock 14

REFERRED TO: Constitutional and Statutory Revision

AN ACT amending the election laws relative to the political calendar and election ballots.

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AMENDED ANALYSIS

This bill amends the statutory authorization for the secretary of state by specifying that the secretary of state's duties shall be those of both a legislative branch as well as an executive branch officer. The bill also changes the election laws by:

(1) Amending the dates in the political calendar used by the secretary of state to administer the election laws.

(2) Changing the number of state primary election ballots which must be furnished by the secretary of state to cities and towns.

(3) Changing the time for placing and removing political advertising.

(4) Changing certain penalty provisions for the violation of RSA 664.

(5) Changing the fine which must be paid by candidates for the failure to file reports on political expenditures and contributions.

(6) Clarifying which checklist shall be used at village district

elections.

(7) Changing the procedure for determining the qualifications of an applicant for voter registration.

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EXPLANATION: Matter added appears in ***bold italics***.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

0835B

93-0492

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18feb93.....1374h

2/3/94.....3845s

3/17/94.....5659B-EBA

#### CHAPTER 4

#### HOUSE BILL - FINAL VERSION

HB 514

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-four

AN ACT

amending the election laws relative to the political  
calendar and election ballots.

Be it Enacted by the Senate and House of Represen-  
tatives in General Court convened:

Place of birth: .....

Date of birth: .....

I hereby swear, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.

.....

(Signature of applicant)

The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.

4:4 Time for Hearings on Alternations to Party Registration.  
Amend RSA 654:32 to read as follows:

654:32 Hearings on Alterations to Party Registration. Before each state or presidential primary election, the supervisors of the checklist shall be in session before each primary for the change of registration of legal voters as provided in RSA 654:34 or 654:34-a or both. Before the presidential primary, the session shall be on the [day] **Friday** preceding the first day of the filing period, between 7 p.m. and 9 p.m. Before the state primary election, the session shall be on Tuesday before the first Wednesday in June between 7 p.m. and 9 p.m.

4:5 Time for Verification of Checklists. Amend the introductory paragraph of RSA 654:38 to read as follows:

On petition of 50 registered voters or 5 percent of the registered voters in any town or ward, whichever is less, or on petition of a majority of the board of supervisors of the checklist filed with the secretary of state [within 30 days] **no later than the fifth Friday** after a state election, the ballot law commission shall conduct an investigation to determine whether or not there should be a revision and verification of the checklist of said town or ward. At least one public hearing duly advertised in a newspaper of general circulation in said town or city shall be held by the commission at such time and place it may determine. In the event of an affirmative decision, the commission shall direct the supervisors to revise and verify such checklist. Thereupon the supervisors shall revise and verify such checklist in the following manner:

4:6 Time for Filing Petition; Straw Candidates. Amend RSA 655:31 to read as follows:

655:31 Straw Candidates. No person shall be a candidate for

re-registered, his party designation, if any, on the checklist undergoing revision shall not be changed except as provided in RSA 654:34.

IV. For the purpose of this section, a person shall be deemed reregistered and need not appear before the supervisors:

\_\_\_\_\_, do hereby certify that we have verified the checklist of registered voters in the town (or ward) of \_\_\_\_\_ of the city) of \_\_\_\_\_, pursuant to the provisions of RSA 654:39.

**654:40 Checklist for Additional Polling Place.** In towns which have established an additional polling place as provided in RSA 658:10, a separate checklist shall be prepared as provided in RSA 658:12.

superior court in vacation, shall order that a copy of the complaint be served

654.  
on the supervisors of the checklist of the town and on the citizens of the complainant named in the petition and shall set a time and immediate hearing. The justice hearing the case may order the voter concerning whom the complaint is made to be added or removed from the checklist as justice requires, and his decision shall be final on the fact as in equity cases.

654:38 B

EXHIBIT

voter concerning whom the complaint is made to be added or removed from the checklist as justice requires, and his decision shall be final on that fact as in equity cases.

**654:43 Penalty for Failure to Keep Correct List.** The supervisor of the checklist shall be guilty of violations if the supervisors at any section neglect or refuse to correct the checklist, on receiving satisfactory evidence of such violations.

I. Shall neglect or refuse to strike from the list the name of any voter who is not a legal voter; or

## Checklists: Special Provisions

**654:40 Checklist for Additional Polling Place.** In towns which have established an additional polling place as provided in RSA 658:10, a separate checklist shall be prepared as provided in RSA 658:12.

**654:41 Checklists for Unincorporated Places.** Checklists for voters in unincorporated places shall be prepared and corrected as provided in RSA 668.

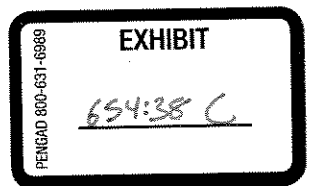
**654-42 Complaint to Superior Court.** Any citizen of the state may, in term time or vacation, file a complaint with the superior court stating that his name is illegally kept from or his name or that of some other citizen is illegally placed upon the checklist of a town or ward and the facts upon which the complaint is based. Said complaint shall be deemed sufficient if it sets forth the basis of the complaint and may be filed by the complainant with the clerk of court or any justice thereof. The complainant may appear with or without counsel. Thereupon, the presiding justice in term time, or any justice of the superior court in vacation, shall order that a copy of the complaint be served on the supervisors of the checklist of the town and on the citizens of the complainant named in the petition and shall set a time and date for an immediate hearing. The justice hearing the case may order the voter concerning whom the complaint is made to be added or removed from the checklist as justice requires, and his decision shall be final or subject to review as in equity cases.

**654:43 Penalty for Failure to Keep Correct List.** The supervisor shall be guilty of violations if the supervisors at any section fail to keep a correct list of the names of the voters on the list. The correction of the checklist, on receiving satisfactory evidence that the list is incorrect, shall be made by the supervisor. I. Shall neglect or refuse to strike from the list the name of any voter who is not a legal voter; or



U.S. Department of Justice

Civil Rights Division



JDR:RPL:SMC:jdh  
DJ 166-012-3  
2004-2563  
2004-2581  
2004-2582

*Voting Section - NWB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.  
Assistant Attorney General  
Civil Bureau  
Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

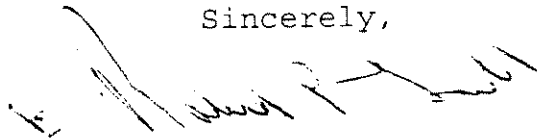
The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).



We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

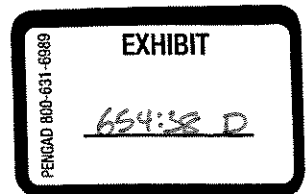
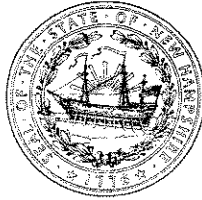
A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich  
Chief, Voting Section

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



MICHAEL A. DELANEY  
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>  
New Hampshire Toll Free 1-866-8868-3703  
or 1-866-VOTER03  
[electionlaw@doj.nh.gov](mailto:electionlaw@doj.nh.gov)